

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION

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SIMPSON VENTURES, INC., )  
Plaintiff, ) Civil Action File No.:  
v. ) 3:07cv48-WHA  
MIDWEST METAL PRODUCTS ) JURY DEMAND  
COMPANY, INC. )  
Defendant. )

CLERK'S OFFICE  
MIDDLE DISTRICT OF ALA.

COMPLAINT

COMES NOW Simpson Ventures, Inc. (hereinafter "SIMPSON"), the Plaintiff herein, and by and through its undersigned attorneys, files this Complaint against the Defendant Mid-West Metal Products Company, Inc., (hereinafter referred to as "MID-WEST"), and in support thereof respectfully shows as follows:

NATURE OF THE CASE

1. Plaintiff Simpson seeks legal and equitable remedies for infringement of United States Design Patent No. Des. 534,321 for a PET LITTER PAN HOUSING (hereinafter "the '321 patent") resulting from the actions and conduct of Defendant as set forth herein. A true and accurate copy of the '321 Patent is attached hereto as **Exhibit A**.
2. This action arises under the patent laws of the United States, 35 U.S.C. § 1 et seq., and this Court has subject matter jurisdiction over all causes of action set forth herein under 28 U.S.C. §§ 1331, 1332, and 1338.
3. Venue is proper in this district pursuant to 28 U.S.C. § 1391 and § 1400.

**PARTIES**

4. Plaintiff is an Alabama corporation (Subchapter S) having a regular and established place of business in Auburn, Alabama.

5. Upon information and belief, Defendant MID-WEST is an Indiana corporation with offices located at 4211 E. Jackson St., Muncie, IN 47303. Upon information and belief, Defendant MID-WEST is doing business as Mid-West Homes For Pets.

**FACTS**

6. Upon information and belief, Defendant is doing business in the United States including in the State of Alabama and within the judicial district of the United States District Court for the Middle District of Alabama.

7. Upon information and belief, Defendant is offering to sell, making, selling, and/or importing pet litter pan housings into the United States, including selling through retail pet stores located in the United States, including retail stores in Alabama.

8. On December 26, 2006, United States Patent No. Des. 534,321, entitled "PET LITTER PAN HOUSING" was duly and legally issued (hereinafter referred to as the '321 Patent), naming Jeffrey M. Simpson of Auburn, Alabama as an inventor.

9. Plaintiff Simpson Ventures, Inc. is the exclusive licensee under the '321 Patent and has the right to sue on the '321 Patent and collect damages. Plaintiff Simpson Ventures, Inc. has been (and is) selling a pet litter pan housing under the exclusive license and under the "Mr. Herzher's" brand name.

10. Upon information and belief, Defendant has been and is currently making, using, offering for sale, selling and/or importing pet litter pan housings that infringe the

‘321 Patent.

11. Upon information and belief, Defendant has been for a time and still is infringing and contributing to/inducing infringement of the ‘321 Patent by selling infringing pet litter pan housings, including the “Bay Isle” Model 1805 pet litter pan housings, embodying the invention patented under the ‘321 Patent to customers in the United States, including customers in the Middle District of Alabama. This selling of the Bay Isle model pet litter pan housings is conducted at least in part through established distribution channels, and Defendant will continue to do so unless enjoined by this Court. See **Exhibits B and C** (printouts from Defendant’s website showing the infringing product and a listing of retailers in Alabama where the product is sold).

12. The infringing pet litter pan housings manufactured, used, offered for sale, sold and/or imported by Defendant include, but are not necessarily limited to, the Bay Isle pet litter pan housings.

13. Upon information and belief, Defendant has been and currently is making, using, offering for sale, and/or selling the Bay Isle pet litter pan housings bearing the designation, model name or trademark Model 1805.

14. Neither Plaintiff nor the patentee Mr. Jeffrey Simpson has granted a license or any other rights to Defendant to make, use, offer for sale, or sell the invention covered by the ‘321 Patent. Therefore, the conduct of Defendant MID-WEST is unlicensed.

15. Defendant has closely copied the product and patented design of Plaintiff and upon information and belief Defendant's infringement is willful.

16. Plaintiff has been damaged by the foregoing infringing acts of the

Defendant in an amount to be determined at trial or upon an accounting.

17. By reason of said acts by Defendant, Plaintiff has been, and will continue to be, seriously damaged and irreparably injured unless Defendant is enjoined by this Court from the actions complained of herein, and thus, Plaintiff is without an adequate remedy at law.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff prays for an Order of this Court, entering judgment:

- A. Holding that Defendant has infringed the '321 Patent;
- B. Preliminarily and permanently enjoining Defendant, its officers, agents, employees, representatives, and all others acting in concert therewith, from further infringing, contributing to, or inducing infringement of the '321 Patent;
- C. Awarding damages to Plaintiff pursuant to 35 U.S.C. § 284 in an amount adequate to compensate Plaintiff for the patent infringement, and finding that, in light of the nature of the infringement, such award be increased three times the amount of the damages found or assessed, and for an award to Plaintiff of all its costs and reasonable attorney's fees in respect thereto in accordance with 35 U.S.C. §§ 284-285;
- D. Finding this to be an exceptional case and awarding Plaintiff its reasonable attorney's fees under 35 U.S.C. § 285;
- E. Awarding to Plaintiff, pursuant to 35 U.S.C. § 289, Defendant's gross profits derived from the infringement of the '321 Patent; and
- F. Awarding such further and other relief as this Court may deem just and proper.

Robert T. Meadows, III

Robert T. Meadows, III  
Alabama Bar No. MEA012  
One of the Attorneys for Plaintiff SIMPSON  
VENTURES, INC.

**JURY DEMAND**

Plaintiff requests a trial by jury of any and all issues triable of right by a jury.

Robert T. Meadows, III

Robert T. Meadows, III  
Alabama Bar No. MEA012  
One of the Attorneys for Plaintiff SIMPSON  
VENTURES, INC.

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# **Exhibit A**



(12) **United States Design Patent** (10) Patent No.: **US D534,321 S**  
**Simpson et al.** (45) Date of Patent: \*\* Dec. 26, 2006

(54) PET LITTER PAN HOUSING

5,249,549 A	10/1993	Rockaitis, III
5,282,542 A	2/1994	Mo
D347,304 S *	5/1994	Hellem .....
5,337,700 A *	8/1994	Toft .....
5,469,807 A	11/1995	Kosmaczeska
5,626,098 A	5/1997	Askins et al.
5,649,500 A	7/1997	Klavenmann et al.

(75) Inventors: Jeffrey M. Simpson, 381 Oak Ridge Dr., Auburn, AL (US) 36830; Mark A. Haley, Asheville, NC (US)

(73) Assignee: Jeffrey M. Simpson, Auburn, AL (US)

(\*\*) Term: 14 Years

(21) Appl. No.: 29/180,465

(Continued)

(22) Filed: Apr. 24, 2003

FOREIGN PATENT DOCUMENTS

GB 2 238 296 A 5/1991

(51) LOC (8) Cl. .... 30-99

OTHER PUBLICATIONS

(52) U.S. Cl. .... D30/161; D30/108; D30/118

In the Company of Dogs, Spring Preview 2001—Catalog, Portland, Tennessee; p. 8, Delux Sport Utility Tricycle with bamboo and rattan wrapped baskets for pets.

(58) Field of Classification Search ..... D30/108-112,

Primary Examiner—Cathy Anne MacCormac  
 (74) Attorney, Agent, or Firm—Gardner Groft Santos & Greenwald, P.C.

D30/114-118, 161; D3/314; 119/161, 163-170,  
 119/416-420, 428-430, 433, 435, 452-453,  
 119/459-460, 462-464, 467, 475, 482, 496-497,  
 119/311, 329, 28.5, 456, 493

See application file for complete search history.

(56)

References Cited

CLAIM

U.S. PATENT DOCUMENTS

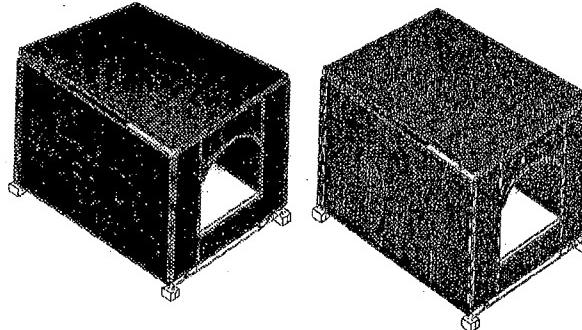
The ornamental design for a pet litter pan housing, as shown and described.

DESCRIPTION

989,029 A	4/1911	Newcomb
1,211,762 A	1/1917	Sawyer
2,560,661 A	7/1951	Poovey
2,789,531 A	4/1957	Diefendorf
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4,696,259 A	9/1987	Fewox
4,762,085 A	8/1988	Ondrasik
4,763,606 A *	8/1988	Ondrasik, II .....
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FIG. 1 is a perspective view of a litter pan housing according to one embodiment of the present design;  
 FIG. 2 is a front view of the litter pan housing of FIG. 1;  
 FIG. 3 is a right side view of the litter pan housing of FIG. 1, the left side being a mirror image;  
 FIG. 4 is a back view of the litter pan housing of FIG. 1;  
 FIG. 5 is a top view of the litter pan housing of FIG. 1;  
 FIG. 6 is a bottom view of the litter pan housing of FIG. 1;  
 FIG. 7 is a perspective view of a litter pan housing according to another embodiment of the present design;  
 FIG. 8 is a front view of the litter pan housing of FIG. 7;  
 FIG. 9 is a right side view of the litter pan housing of FIG. 7, the left side being a mirror image;  
 FIG. 10 is a back view of the litter pan housing of FIG. 7;  
 FIG. 11 is a top view of the litter pan housing of FIG. 7; and,  
 FIG. 12 is a bottom view of the litter pan housing of FIG. 7.

1 Claim, 12 Drawing Sheets



## US D534,321 S

Page 2

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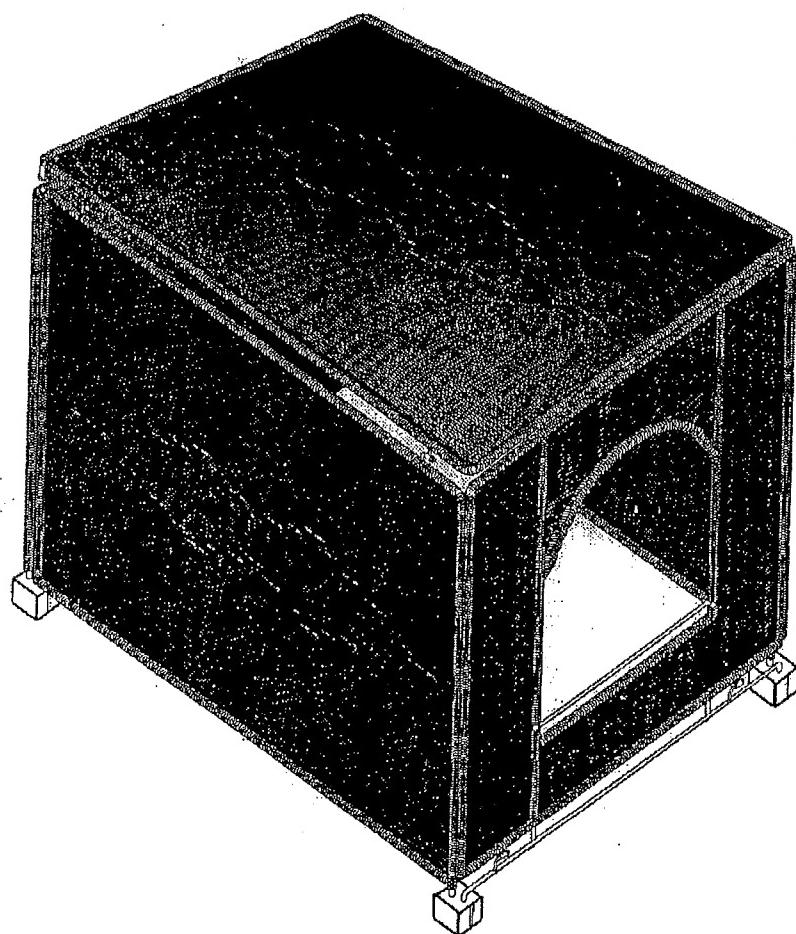
\* cited by examiner

U.S. Patent

Dec. 26, 2006

Sheet 1 of 12

US D534,321 S



*Fig. 1*

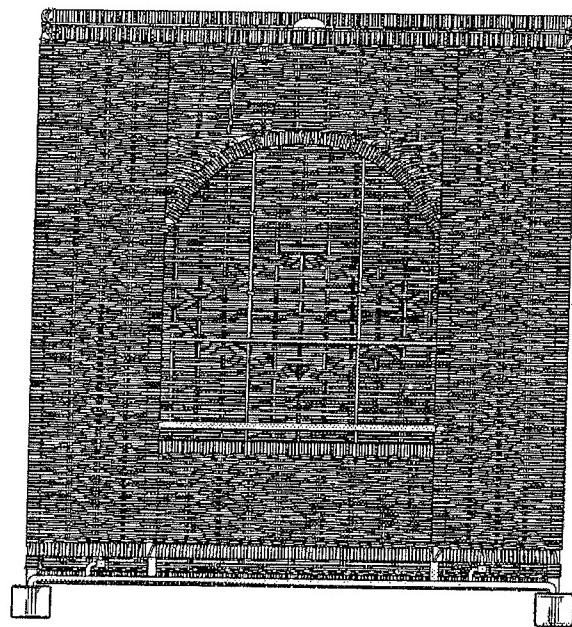
**U.S. Patent**

Dec. 26, 2006

Sheet 2 of 12

US D534,321 S

*Fig. 2*



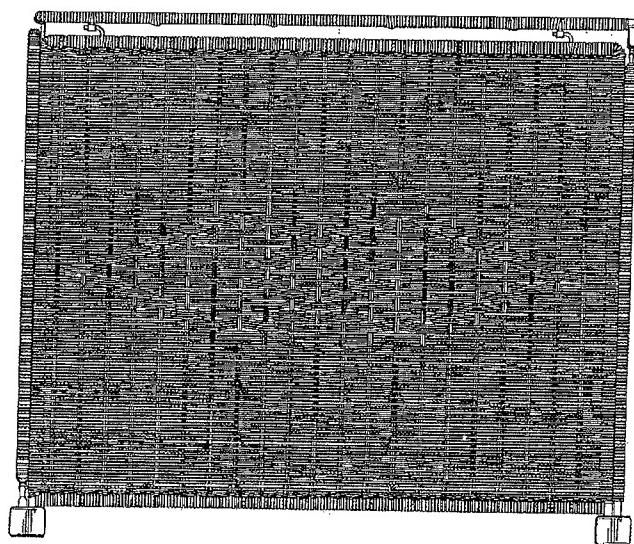
**U.S. Patent**

Dec. 26, 2006

Sheet 3 of 12

US D534,321 S

*Fig. 3*



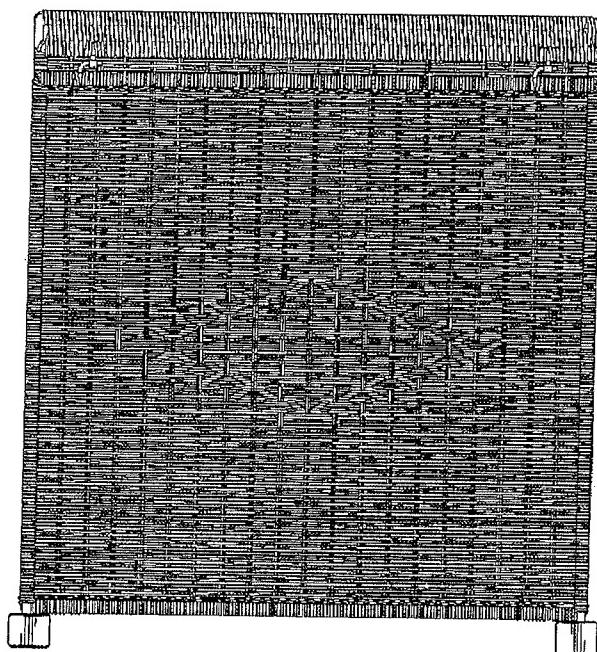
**U.S. Patent**

Dec. 26, 2006

Sheet 4 of 12

US D534,321 S

*Fig. 4*



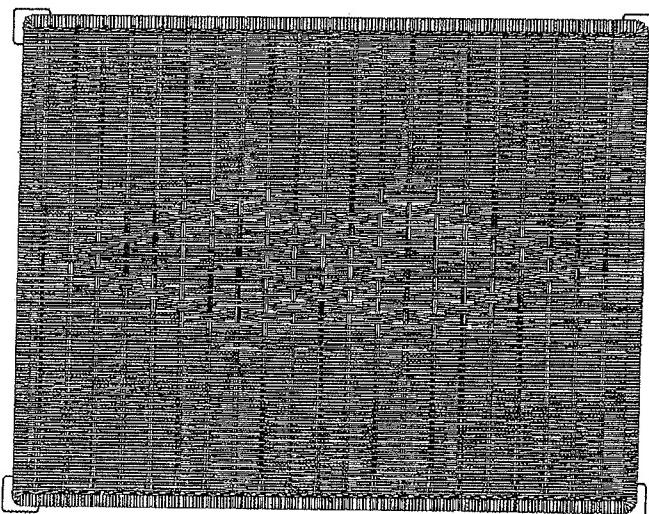
U.S. Patent

Dec. 26, 2006

Sheet 5 of 12

US D534,321 S

*Fig. 5*



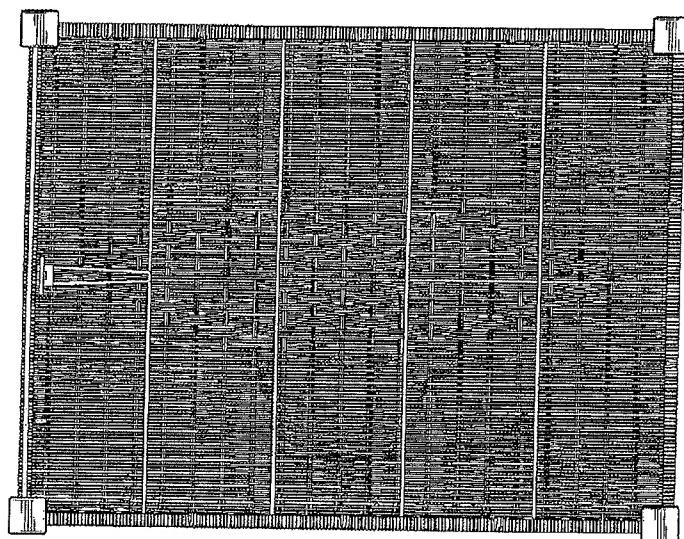
U.S. Patent

Dec. 26, 2006

Sheet 6 of 12

US D534,321 S

*Fig. 6*

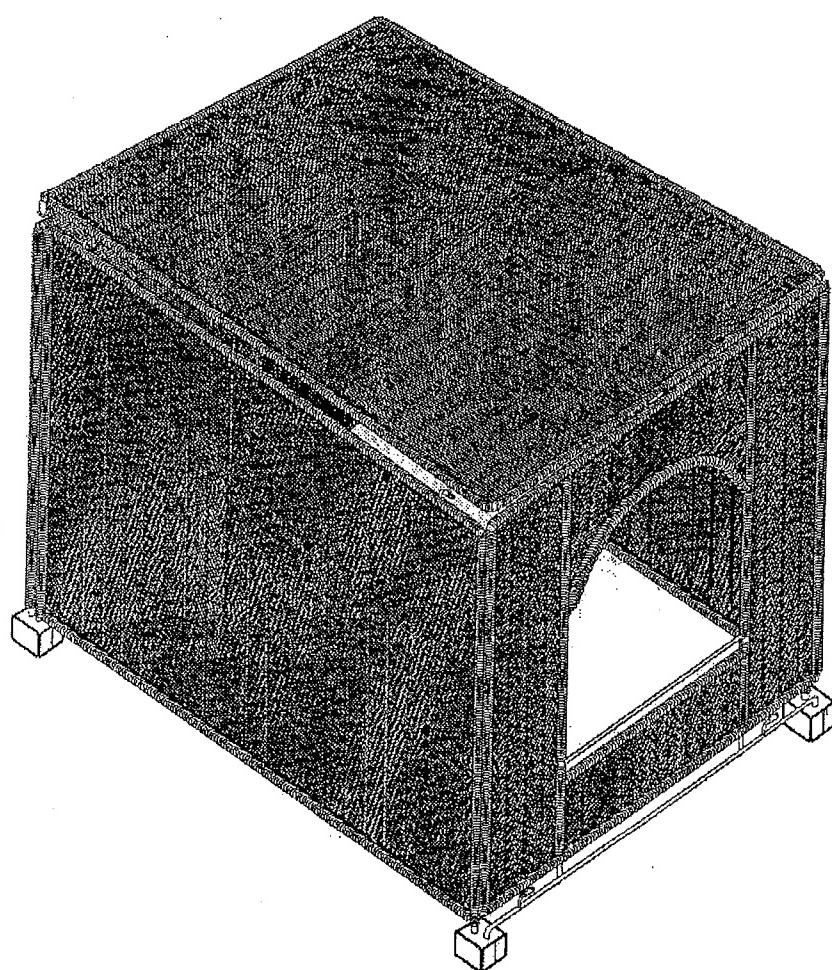


U.S. Patent

Dec. 26, 2006

Sheet 7 of 12

US D534,321 S



*Fig. 1*

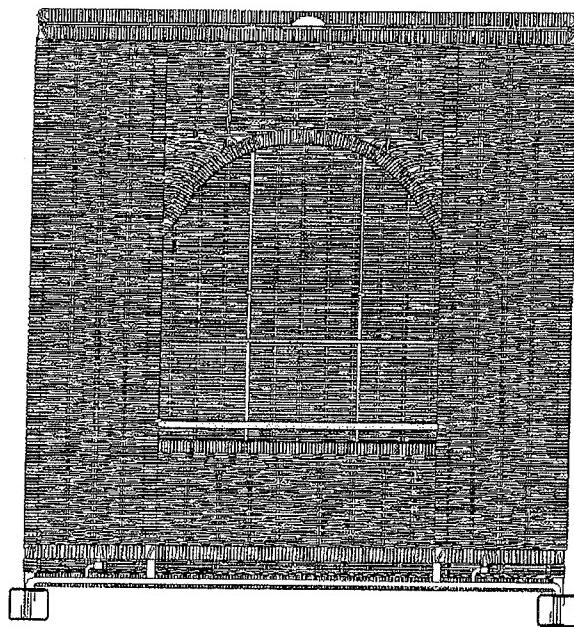
U.S. Patent

Dec. 26, 2006

Sheet 8 of 12

US D534,321 S

*Fig. 8*



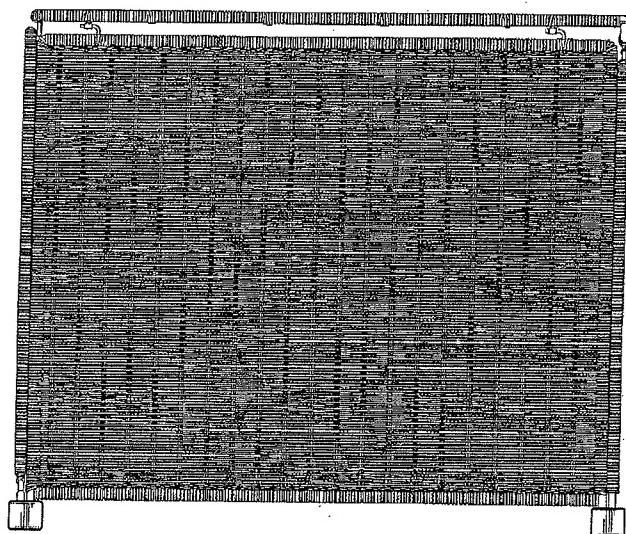
**U.S. Patent**

Dec. 26, 2006

Sheet 9 of 12

**US D534,321 S**

*Fig. 9*



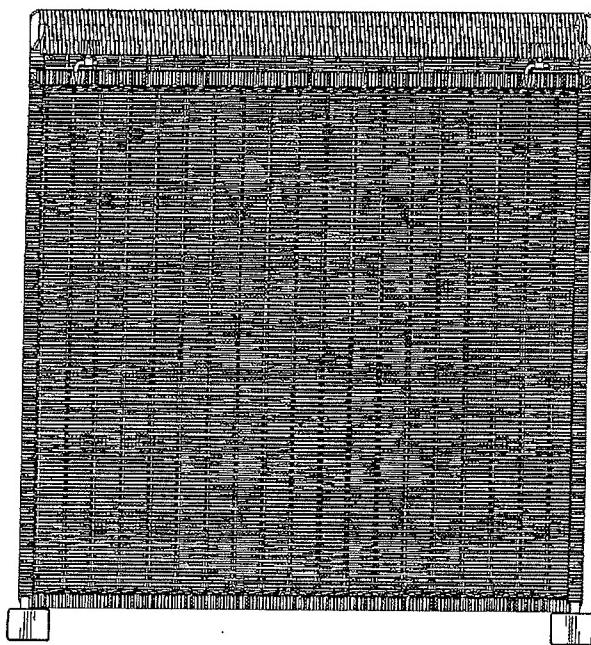
**U.S. Patent**

Dec. 26, 2006

Sheet 10 of 12

US D534,321 S

*Fig. III*



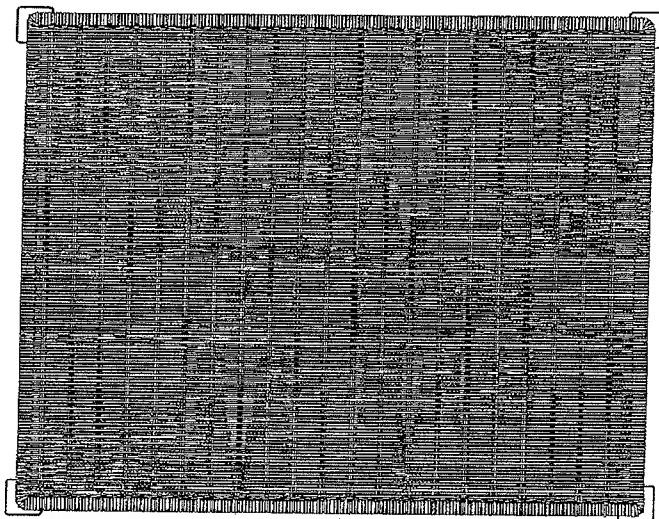
**U.S. Patent**

Dec. 26, 2006

Sheet 11 of 12

**US D534,321 S**

*Fig. II*



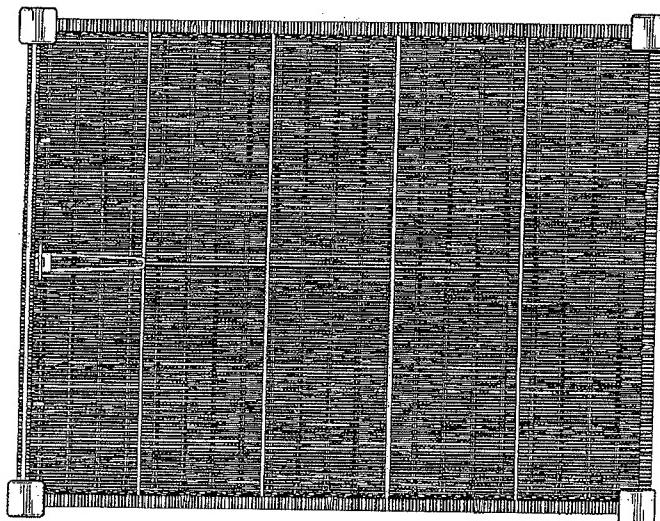
U.S. Patent

Dec. 26, 2006

Sheet 12 of 12

US D534,321 S

*Fig. 12*



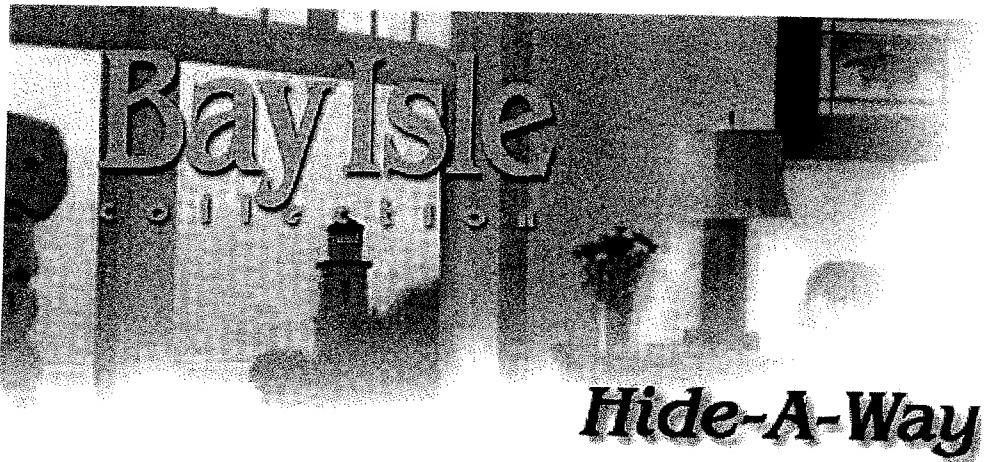
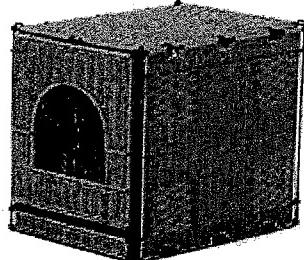
## **Exhibit B**

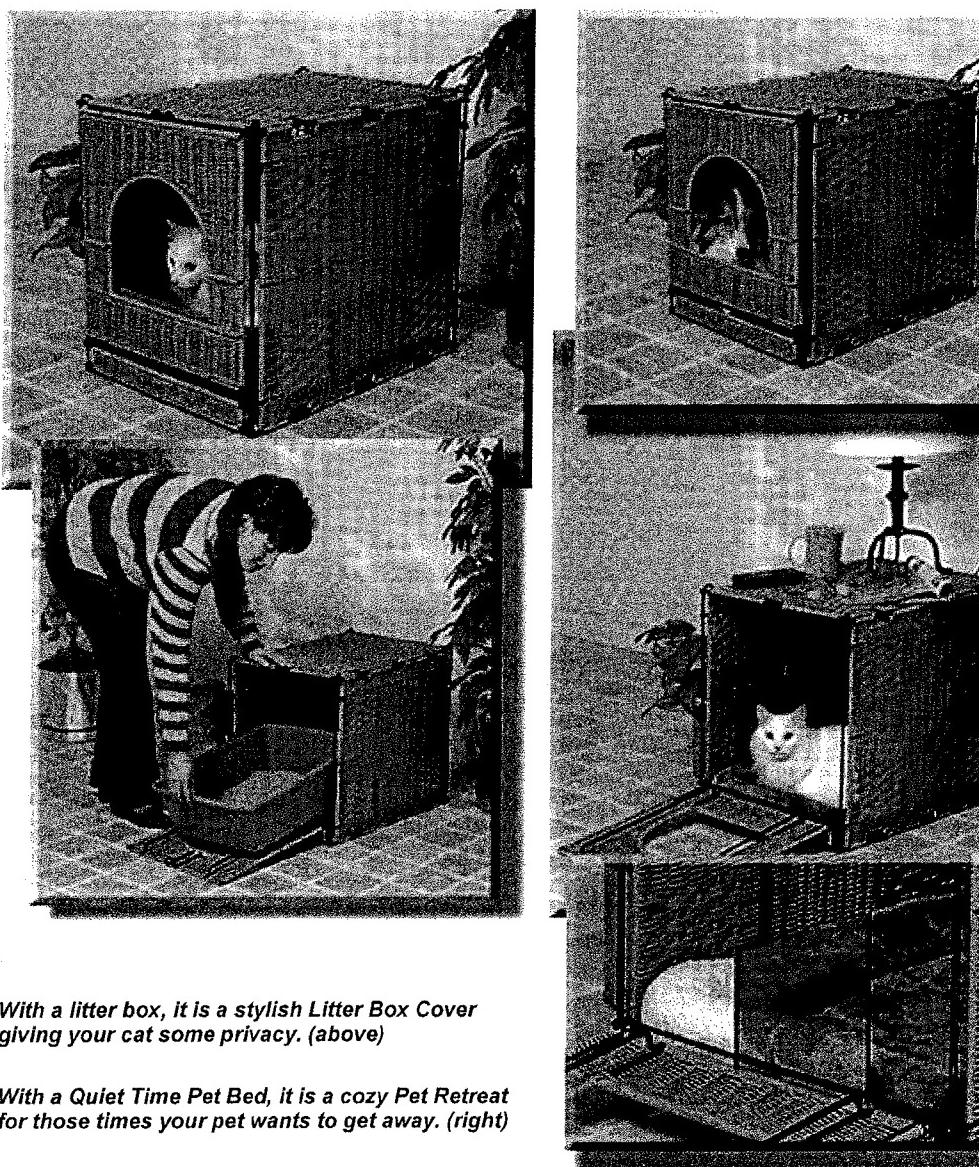
## MIDWEST - Bay Isle Collection: Hide-A-Way

Page 1 of 2

Dogs & Puppies  
 Cats & Kittens  
 Rabbits & Bunnies  
 Small Animals  
 Birds  
 Exercise Pens  
 Chain-Link Kennels  
 Pet Beds  
 Vehicle Barriers  
 Grooming Tables  
 Waste Removal Tools  
 Miscellaneous

## Product Quick Links

**Model 1805 Hide-A-Way****Litter Box Cover or Pet Retreat****Size:** 23 1/4 L x 17 1/4 W x 19 3/4 H"**Mesh:** 1 1/2 x 5"**Wire Gauge:** 3, 6, 7, 9, 12**Weight:** 13 lbs. (product) / 15 lbs. (in carton)**Accessories:** 40224/CN/GY, 40324-SL-TN, 40430, 40624-BKI-CL**UPC:** 0 27773 00559 9
[Where To Buy](#) CLICK HERE

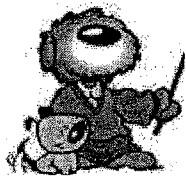
*With a litter box, it is a stylish Litter Box Cover giving your cat some privacy. (above)*

*With a Quiet Time Pet Bed, it is a cozy Pet Retreat for those times your pet wants to get away. (right)*

*Designed by MIDWEST ~ Manufactured in China*

*Bay Isle I*

# **Exhibit C**



## America's Largest Home Builder For Pets

[Where to Buy](#) | [Why Crate Train?](#) | [How To Crate Train](#) | [What's New](#) | [Assembly Instructions](#) | [Find the Right Sized Crate!!](#) | [Home](#)

Toll Free Helpline: (800) 428-8560 - Monday-Friday, 9am-4pm (EST)

	Company Name	Address	City	State	Phone
Dogs & Puppies					
Cats & Kittens	G & J Pet Center	1021 Hwy. 431 No.	Anniston	AL	256-2
Rabbits & Bunnies	Tractor Supply # 774	1067 N Brindlee Mountain Pkwy	Arab	AL	256-2
Small Animals	Tractor Supply Company #415	601 U S Hwy. 72 West	Athens	AL	256-2
Birds	Pet Supermarket #264	1423 Gladysden Hwy.	Birmingham	AL	205-6
Exercise Pens	Pet Supplies Plus	9711 Parkway East	Birmingham	AL	205-6
Chain-Link Kennels	Pets America	2652 Valleydale Rd.	Birmingham	AL	205-6
Pet Beds	Superpetz #565	7958 Crestwood Blvd.	Birmingham	AL	205-6
Vehicle Barriers	Tractor Supply #772	2085 US Hwy 431 South	Boaz	AL	256-2
Grooming Tables	Prestigious Pets	204 1st St NW	Cullman	AL	256-2
Waste Removal Tools	Tractor Supply Company #434	1807 Second Ave., SW	Cullman	AL	256-2
Miscellaneous	Pet Depot	1000 Beltline Rd. SW Unit F	Decatur	AL	
Product Quick Links	PetsMart	3500 Ross Clark Cir	Dothan	AL	
	Pet Haven	16 S. Church	Fairhope	AL	334-9
	Pet Depot	244 Seville St.	Florence	AL	
	Tractor Supply Company #556	100 DeKalb Plaza Blvd.	Ft. Payne	AL	256-2
	Anns Fish & Pets	1529 Decatur Hwy.	Fultondale	AL	205-6
	Superpetz #567	255 Lakeshore Pkwy	Homewood	AL	205-6
	Pet Supermarket #268	2772 John Hawkins Pkwy	Hoover	AL	205-6
	Pet Pantry	10099 S. Memorial Parkway	Huntsville	AL	256-2
	The Pet Gallery	930A1 Monrovia Rd.	Huntsville	AL	256-2
	Tractor Supply # 798	1200 Hwy 78 West Suite A	Jasper	AL	205-2
	B & B Pet Stop	5035 Cottage Hill Rd.	Mobile	AL	251-6
	B&B Pet Stop Inc.	5035 Cottage Hill Rd.	Mobile	AL	334-6
	Pet Supplies Plus #8017	803 Hillcrest Rd.	Mobile	AL	251-6